IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1487 OF 1999
IN
SUMMONS FOR JUDGEMENT NO.226 OF 1998
IN
SUMMARY SUIT NO.4819 OF 1996

Mr.Ramesh Sharma
Proprietor of M/s.Tripple Aar
Monies .. Appellant.

Versus

Mr.Satprakash Sharma
Proprietor of T.V. & Radio
Publicity Services .. Respondent.

Ms.Kusum S. Maurya i/b.V.P.Sawant for appellant.
None for respondent.

CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ.

DATE : 16th June, 2007.

P.C.:

1. Heard learned Advocate appearing for the appellant. Perused the record.

2. This appeal arises from the order dated 8th September, 1999. By the impugned order, Summons for Judgement No.226 of 1998 has been made absolute in terms of Order 37 Rule 2 of C.P.C. The decree is for a sum of Rs.1,73,096/- (Rupees One lac seventy three thousand ninety six only) with interest @18% p.a.

3. Only ground on which the said impugned order is

sought to be challenged is that the appellant wanted to show that there exists triable issue and, therefore, the learned Single Judge ought to have granted time to file an application to defend the suit.

4. It is not in dispute that Summons for Judgement under Order 37 Rule 2 was served upon the appellant on 21st March, 1998 and the impugned order has been passed on 8th September, 1999 and within this period the appellant did not bother to file an application for leave to defend the suit. Even the impugned order ex-facie discloses that no steps were taken by the appellant to seek leave to defend the suit.

5. The contention that the appellant had sought for time to file such an application and, therefore, the matter ought to have been adjourned is to be rejected on two grounds. Firstly, that the record nowhere discloses that any such request was made by the appellant when the matter came up for hearing before the learned Single Judge on 8th September, 1999. Secondly, there was no occasion for the Court to grant any such time in view of the failure on the part of the appellant to file an application seeking leave to defend the suit within 10 days in terms of Order 37 Rule 2 of C.P.C. Admittedly, no such application was filed within the said period.

The Court was therefore left with no alternative than to issue Summons for Judgement in terms of prayers (a) and (b) since such an order has to follow as a result of the failure on the part of the appellant to seek leave to defend the suit under Order 37 Rule 2 of C.P.C.

6. In the circumstances, there is no case made out for interference with the impugned order. The Appeal stands dismissed. No order as to costs.

(R.M.S.KHANDEPARKAR, J.)

(D.G.KARNIK, J.)